

Peter Szanto 949-887-2369  
11 Shore Pine  
Newport Beach CA 92657

# **U.S. BANKRUPTCY COURT**

## **DISTRICT OF OREGON**

*1001 SW 5th Ave #700 Portland, OR 97204 (503) 326-1500*

**In Re Peter Szanto, Debtor**

**# 16 –bk-33185 pcm7**

**DEBTOR’S Response**  
**To Relief from Stay Motion**  
**(Docket Entry 671)**

**Form 720.80 attached as EXHIBIT C**

**HEARING March 28, 2019 – 1PM**

May it please this Honorable Court. Comes now debtor responding to JPMorganChase’s application for relief from stay (DE 671).

### **1. FACTS**

JPMorganChase (Chase) seeks relief from the 11 USC 362 stay upon grounds of “lack of adequate protection because of failure to make sufficient adequate protection payments and lack of sufficient equity cushion.” (DE 671, p. 2 of Motion for Relief).

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Chase also contends that there is “no equity in the collateral and the property is not necessary for an effective reorganization.”(*ibid*)

Momentarily, debtor will assess and explain Chase’s intentional fabrication of these two false statements. And why relief from the stay would be deleterious on a multitude of levels both to debtor and the progress of this Bankruptcy.

## **2. DEBTOR’S OFFER of COMPROMISE**

The Trustee has accepted debtor’s exemptions regarding debtor’s residence which is the property for which Chase seeks relief from stay herein (see DE 506 and 489 at p.2). Debtor is thus entitled to \$550,000.00 pursuant to that exemption from Bankruptcy liquidation.

Additionally, because Mrs. Szanto, as spouse of the debtor (and not based on any community property law) has perfected a homestead exemption as a 22 year resident of the subject property. And because she is elderly, disabled and handicapped, she is entitled, pursuant to CA Code of Civil Procedure § 704.730 to \$175,000 after foreclosure.

Upon payment to Susan and Peter Szanto respectively of the \$175,000 and \$550,000 described above, debtor and Susan Szanto will

1  
2 quitclaim all right, *in perpetuity*, to the subject property. And will abandon  
3 and deliver said property to Chase.  
4

5 This offer is predicated upon immediate delivery of \$725,000 to  
6 debtor and Mrs. Szanto. And further provision that debtor and his spouse  
7 may occupy the subject property for 9 months after delivery of the agreed  
8 to \$725,000. Said 9 months being the amount of time debtor and Mrs.  
9 Szanto anticipate necessary to secure a new residence (while finalizing  
10 the instant Bankruptcy and while Mrs. Szanto continues the process of  
11 liver transplantation).  
12  
13

### 14 **3. MEMORANDUM in RESPONSE**

#### 15 16 **a. Chase's INCORRECT Argument of Debtor's Lack of Equity**

17 Chase's basis for relief from the stay is 11 USC § 362(d)(1 and 2)'s:  
18 1) lack of equity in the collateral which is to be liquidated 2) the property is  
19 not necessary to effective reorganization and 3) that there is a lack of  
20 adequate protection payments.  
21

22 Debtor will address the erroneous equity arguments first.  
23

24 Even though this matter is proceeding in Chapter 7, debtor will  
25 be making further applications for conversion to Chapter 11. Additionally,  
26

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1  
2 at all times since the conversion to Chapter 7, debtor has represented that  
3 it is his intent to restructure debt and to retain the subject property (see DE  
4 318, pp. 1-5)

5  
6 Debtor contends that **neither** 11 USC § 362(d)(2) requirement  
7 is presently satisfied so as to justify any lawful relief from the stay.

8  
9  
10 **1. DEBTOR'S EQUITY**

11 Chase cites (DE 671, p.1 of Motion) to debtor's own  
12 representation from May of 2017 (nearly 2 years ago) as to the home's  
13 value. At that time debtor did not reside at the property and apprised the  
14 Court of various items of deferred maintenance and opportunities for home  
15 improvement.

16  
17 Now debtor has resided at the property since conversion to  
18 Chapter 7, 16 months ago. All of the problematic issues of deferred  
19 maintenance, painting of the premises (inside and out), landscaping, etc.,  
20 etc., etc. have been resolved by debtor's own personal actions and labors.

21 After agreement with the Trustee as to abandonment of the  
22 property to debtor (DE 562) on 11-29-2019. Debtor began marketing the  
23 property.  
24

Debtor's listing presentation [EXHIBIT A] offers the home for sale for \$3,500,000.00.

Debtor is a California Real Estate Broker with more than 50 years experience in the marketing of real property. Debtor includes various comparable properties in the listing sheet, which he updates weekly to account for changes in market conditions and sales and offerings.

Debtor has had offers, and is in active negotiations with 2 potential buyers which will likely result in a sale at or near \$3.2 million dollars.<sup>1</sup>

Given the likely sales price of \$3.2 million dollars and Chase's own representation of \$2.574 million dollars of debt (DE 671, p.1 of Motion) debtor's real equity is approximately **\$626,000**.

Thus, Chase's representation of debtor's equity is in error because it is based on out-dated information and because it does not consider debtor's past, present and on-going sweat-equity infusions into the property's improvement of the last 16 months.

- - - - -

- 1. The current winter has been more harsh than any other winter since debtor has owned the subject property. Negotiations in 40' degree weather for oceanside property are simply very difficult. When winter ends and weather returns to the normal 73', a sale will be quickly consummated.*

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1  
2 The correct measurement and analysis of the metric of equity is far  
3 different than merely a financial consideration of how much is owed versus  
4 value, because the metric of fully-involved home ownership must be  
5 properly considered. See *Sun Valley Newspapers* (1994) 171 BR 71.

6  
7 The concept of “sweat equity” was articulated by the U.S.  
8 Supreme Court so as to explain the importance of the non-accounting and  
9 non-monetary value of a “going-concern” – or lengthy ownership which  
10 inherently creates **its own tangible values of stability and community**:

11 “Even where debts far exceed the current value of assets, a  
12 debtor who retains his equity interest in the enterprise retains  
13 “property”. Whether the value is “present or prospective, for  
14 dividends or only for purposes of control” a retained equity  
15 interest is a property interest . . . . Indeed, even in a sole  
16 proprietorship, where “going concern” value may be minimal, there  
17 may still be some value in the control of the enterprise;  
18 obviously, also at issue is the interest in potential future  
19 profits of a now-insolvent business. See *SEC v. Canandaigua*  
20 *Enterprises Corp.*, (1964) 339 F. 2d 14, 21. And while the Code  
21 itself does not define what “property” means as the term is used  
22 in § 1129(b), the relevant legislative history suggests that  
23 Congress’ meaning was quite broad. “‘Property’ includes both  
24 tangible and intangible property.” H.R. Rep. No. 95-595, at 413.”

25 *Norwest Bank Worthington v. Ahlers*, (1988) 485 U.S. 197, 207-8

26 In this case, in addition to the debtor’s equity described *supra*,  
27 debtor’s equity comprises all of the **many thousands of hours** he has

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1  
2 invested in retention of the property as to which there is a dispute. Debtor's  
3 efforts are not merely the litigation with Chase, but also the **thousands of**  
4 **hours** he devoted to efforts to become well acquainted with every aspect  
5 of the community. And learning to understand values and communicate  
6 the merits of the neighborhood effectively to potential buyers and renters.  
7 Among other things, debtor has, 1) served on the community's board of  
8 director's (in efforts to change community ownership from co-operative to  
9 individual ownership (this is more fully discussed in the PLAN and the  
10 disclosure statement (DE 102 and 164)), 2) hundreds of hours of viewing,  
11 presentation and negotiation of dozens of real property agreements in the  
12 community (thus becoming well versed in real property and relative values  
13 and their maintenance as well as the demographics of potential buyers  
14 and renters.), 3) extensive preparation, planning and execution of the  
15 complete resolution and rectification of all deferred maintenance at the  
16 property, 4) presentation and display of the property to dozens of potential  
17 purchasers and renters in anticipation that the foreclosure threat will soon  
18 be resolved, so that debtor can move forward with sale of the subject  
19 property.

20 "This is particularly so since the whole "sweat equity" theory of "new  
21 value" was so carefully discussed by the Supreme Court in *Norwest Bank*  
22 *Worthington v. Ahlers*, which held that contributions of new value must  
23 be "money or money's worth<sup>2</sup>." Presumably, post-petition earnings  
24 contributed to a plan indeed constitute "money or money's worth," and  
25 are not mere "sweat equity," as indeed now these kinds of property are  
26 part of the estate."

27 *In re Lindsey*, (2011) 453 B.R. 886, 901

28 -----  
29 2. 'Money's worth' being the sweat equity and personal input effort described earlier

Specifically, debtor's efforts to create value from the property, as well as preparing for further steps to be taken in its sale are all meaningful values in which debtor's efforts and work were expended in furtherance of contributing to and increasing his equity in the property !

To reiterate *Norwest (ibid)*: "Whether the value is "present or prospective, for dividends or only for purposes of control" a retained equity interest is a property interest." That property interest is the equity, built-up increased and enhanced over 20 years which debtor seeks also to protect!

Thus, contrary to Chase's speculation, debtor's equity is the sweat of his brow, sweat of his muscle, sweat of his mental efforts, the sweat of straining to maximize the property's value, and the keen effort of the perseverance debtor has expended.

**b. Chase Seeks to Make a Double Recovery**

The Motion for Relief from Stay questions the fundamental foundation of Bankruptcy Law: **Chase's affirmed entitlement to approximately \$500,000 of arrearages is guaranteed by money which is currently held by Trustee for the benefit of Chase.**

Indeed, as will be considered in section 3, Adequate Protection, the essential question in this Motion for Relief from Stay is why Chase has not requested the Trustee to provide adequate protection for its claim?



1  
2 Indeed, Chase has always represented its interests to be only to  
3 make recovery of arrearages. Chase has not represented in its claim that  
4 it seeks possession. As a matter of fact, Chase's efforts at foreclosure,  
5 were it to go forward, would be severely complicated by the fact that the  
6 above mentioned exemptions of \$550,000 and \$175,000 would be due  
7 and payable to debtor and Mrs. Szanto immediately. However, Chase  
8 would be constrained in delivery of good title to any *bona fide purchaser*,  
9 because debtor's right to redeem the property extends for 1 year after  
10 foreclosure, see CA Code of Civil Procedure § 729.010.  
11

12 **Likewise, the entire amount of Chase's represented debt of**  
13 **\$1.59 million is also guaranteed by the \$2.2 million of property value**  
14 **which Chase itself represents in its motion!**  
15

16 **Here, Chase has made no representation of any intent to**  
17 **withdraw its Bankruptcy claim if it is allowed to move this matter to**  
18 **foreclosure.**  
19

20 **The relief from stay would thereby compound the problems**  
21 **with Chase's claim, because Chase appears to seek to participate in**  
22 **foreclosure while at the same time making a recovery from debtor's**  
23 **liquidation. Chase has made no representation that it would withdraw**  
24 **its claim after securing foreclosure.**  
25

1  
2 **c. Blind Siding Trustee and Debtor –**  
3 **No Request for Adequate Protection**  
4

5 As discussed above, Chase is entitled to money and not the right  
6 to venal and sadistic **extermination** of debtor and Mrs. Szanto. Debtor  
7 and Mrs. Szanto are both ill, elderly and suffer from life terminating  
8 afflictions.  
9

10 Currently, loss of the subject property is equivalent to a sentence  
11 of death for debtor and his spouse: they simply do not have the resources  
12 to afford another home.  
13

14 Certainly, Chase is well aware of this predicament faced by  
15 debtor and his spouse – and there is likely a euphoric and very giddy  
16 anticipation at Chase that debtor will be made homeless. Thus, it is not  
17 surprising that Chase initiated relief from stay proceedings rather than  
18 seeking 11 USC § 361 request for adequate protection proceedings.  
19

20 Because Chase's goal is to cause pain and suffering wherever it  
21 can – without consequence to itself and with immense demonic pleasure  
22 to its counsel – it is not surprising that Chase never sought or phoned to  
23 discuss any compromise with debtor or the Trustee as to making adequate  
24 protection payments or some other reasonable (humane) solution.  
25

1  
2 Thus, because as Chase represents (DE 671, Motion, p. 1) debtor's  
3 payments are \$4,744.58. Debtor suggests that short of relief from stay  
4 and subsequent loss of debtor's home, there is an alternative of providing  
5 the \$4,744.58 adequate protection to which Chase is entitled.  
6

7 The facts are these. After Chase's previous effort for relief from stay  
8 (DE 203), debtor agreed -- and did -- make \$5,000 / month adequate  
9 protection payments.  
10

11 After conversion to Chapter 7, debtor asked that the payments be  
12 stayed (DE 294). The Trustee stayed these payments (DE 299) [EXHIBIT  
13 B], because he controlled all of the money of the estate.  
14

15 Thereafter, Trustee and debtor agreed to abandonment of the  
16 subject property from debtor's estate (DE 562) which became effective on  
17 11-29-2018. And after which debtor has engaged in diligent and effective  
18 sales efforts.  
19

20 Sadistically, without any warning or effort to seek protection or any  
21 compromise Chase filed the instant request for relief from stay just 68  
22 days later.  
23

24 Debtor suggests to the Court that Chase's effort be seen for what it  
25 is -- an effort impermissibly to punish, humiliate and denigrate debtor by  
26

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1  
2 loss of his home for the sole purpose of causing suffering and mental  
3 anguish to elderly people who are both in the process of dying in any  
4 event.

5  
6 **d. Tortious Interference with Business Advantage**  
7

8  
9 Tortious interference with a business relationship is also referred to  
10 as ‘tortious interference with prospective economic advantage’; no matter  
11 the term used, the elements are the same. *RFP LLC v. SCVNGR* (2011)  
12 788 F.Supp.2d 191.

13  
14 The elements of tortious interference with a business relationship  
15 are “(1) the plaintiff (**here debtor**) has business relations with many third  
16 parties (**potential buyers of the subject property**); (2) the defendant  
17 (**Chase**) interfered with those business relations; (3) the defendant  
18 (**Chase**) acted for a wrongful purpose or used dishonest, unfair, or  
19 improper means (**by making false statements about valuation and**  
20 **failing to seek adequate protection**) ; and (4) the defendant's (**Chase**)  
21 acts injured the relationship (**by causing debtor to make full disclosures**  
22 **of a very problematic nature to potential buyers**).” *Catskill Dev., L.L.C.*  
23 *v. Park Place Entm’t Corp.*, (2008) 547 F.3d 115, 132.

24  
25 Here, since Chase filed its motion for relief from stay, debtor has  
26 been severely impacted by having to communicate to potential buyers the

1  
2 issues raised by Chase's motion (it would be a severe ethical violation of  
3 the California Real Estate Licensure rules if debtor did not make such full  
4 and complete disclosures).

5  
6 As could be expected these disclosures to potential buyers were not  
7 received with happiness nor pleasure and debtor's ability to sell the  
8 subject property has been harmed (perhaps, irrevocably) thereby.

9  
10 Additionally, because debtor's furniture is part of the Bankruptcy  
11 estate, said furniture was stored. Debtor rented and borrowed furniture  
12 to decorate the subject property for sale. Again, debtor was ethically  
13 bound to apprise those from whom he borrowed furniture and household  
14 decorations about the events of the potential foreclosure.

15  
16 Debtor contends Chase's egregious effort for relief from the  
17 Bankruptcy stay was undertaken for improper purposes of emotionally and  
18 physically harming debtor and his spouse with foreknowledge that those  
19 efforts would likely cause homelessness and death. And at the same time  
20 knowingly interfering with debtor's efforts to sell the subject property at the  
21 highest and best price.

22  
23 Thus, Chase's relief from stay – compounded by inaccurate  
24 statements regarding the value of the property, disregard of all efforts to  
25 seek adequate protection payments can readily be seen to have been  
26 undertaken for improper purposes simply to vex debtor and to interfere

27  
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1  
2 with his efforts to obtain the highest and best price for his property.  
3

4 Thus, the entire Motion for relief from stay becomes nothing more  
5 than Chase's abuse of process, because relief from stay was never  
6 intended to cause a debtor's physical and mental annihilation.  
7

8  
9 **e. Knowing False Statement by Chase**

10  
11 It should not be surprising to this Court that Chase would make  
12 intentionally false statements in an effort to mislead and deceive this Court  
13 so as to prevail in heinous disregard of truth, justice and law.  
14

15 Here, such blatant knowingly false statement appears on Chase's  
16 motion (DE 671, p. 1(d)) where the value of debtor's home is represented  
17 as of \$2.275 million. This valuation is from debtor's own May 2017 value  
18 of the property.  
19

20 Now, however, matters have moved forward and in [EXHIBIT B],  
21 p.1, #2] filed 12-13-17, the Trustee states: "The Trustee has received a  
22 CMA with a value of \$2,816,730."  
23

24 Chase's false representation is the foundation of Chase's Motion for  
25 Relief from Stay, because with the higher figure there is plenty of equity for  
26

both creditors and debtor.

There is no valid reason for Chase to have intentionally disregarded the later valuation by the Trustee.

The Court should consider sanctions against Chase for this intentional mis-statement which was certainly filed by Chase in a blatant effort purposefully to mis lead this Court.

#### **4. Declaration**

1. My name is Peter Szanto.
2. I am the debtor herein.
3. This is my truthful declaration supporting my opposition to Chase's relief from stay application.
4. Not one of the more than dozen Chase attorneys with whom I am in current communication regarding this Bankruptcy contacted me at any time after I recovered ownership of the subject property after 11-29-19 as to adequate protection payments in lieu of foreclosure.
5. Chase's reliance on a valuation price regarding the subject property from 2 years ago is good demonstration and excellent evidence of the manner in which Chase seeks intentionally to deceive this Honorable court: by presenting facts known to be false.

1  
2 6. Competent evidence regarding valuation is in the record (DE 299).

3 7. **Chase intentionally chose to disregard the record in hopes of**  
4 **purposefully deceiving this Court.**

5 8. Since conversion of this Bankruptcy to Chapter 7, I have resolved  
6 all deferred maintenance, property rehabilitation, landscaping and  
7 many other various ancillary issues of improvement of the subject  
8 property.

9 9. I estimate that I have engaged in more than 1300 hours of labor  
10 and management activities in support of making the subject property  
11 ready for sale in the last 16 months after conversion.

12 10. I received no compensation for that labor.

13 11. I know to an absolute certainty that Chase monitors my activities  
14 with private investigators who spy on me.

15 12. I know this because over the years , I have confronted persons  
16 “shadowing me” who have admitted they worked for Chase as  
17 private investigators.

18 13. I believe that in the present setting, Chase, in its surveillance of  
19 of me -- and intrusion upon my privacy, realized that the subject  
20 property was in **perfect condition** and **“decked-out”** for sale.

21 14. In the present circumstances, I believe to an absolute certainty,  
22 that Chase made its relief from stay motion at the optimum time  
23 thinking that Chase could “scoop-up” a property in absolutely  
24 “primo, tip top” condition.

25 14. And thereafter “grab” those profits of my sweat equity to which I  
26 am entitled.



- 1
- 2 15. Being a rational business person, and not a pig. my offer to
- 3 Chase of "cashing" me out for \$725,000 allows Chase to make
- 4 a reasonable additional profit in marketing and selling the subject
- 5 property after they become its owner.
- 6 16. I am ready, willing and able to make adequate protection
- 7 payments from post-petition earnings.
- 8 17. I declare under penalty of perjury under the laws of the United
- 9 States that the foregoing is true and correct. Signed at Irvine CA.
- 10

11

12 Dated 3/11/ 2019 /s/ signed electronically Peter Szanto

13

14 **6. Conclusion**

15

16 For the reasons enumerated, and other reasons to be explained

17 by testimony at the hearing, debtor prays denial of the Motion for Relief

18 from Stay.

19 Respectfully,

20

21 Dated 3/11/ 2019 /s/ signed electronically Peter Szanto

22

23

24

1  
2 **PROOF of SERVICE**  
3

4 My name is Maquisha Reynolds, I am over 21 years of age and not a party to  
5 the within action. My business address is PO Box 14894, Irvine CA 92623  
6

7 On the date indicated below, I personally served the within: **Response**  
8 on the following by placing in postage pre-paid envelopes of the within  
9 document and mailing same:

- 10 a. Internal Revenue Service, PO Box 7346, Philadelphia PA 19101  
11 b. First Service Residential, 15241 Laguna Canyon Rd, Irvine CA 92618  
12 c. JPMorgan Chase Bank, represented by:  
13 Gadi Shahak c/o Shapiro & Sutherland  
14 1499 SE Tech Center Place, Suite 255 , Vancouver, WA 98683  
15 d. Bank of America, c/o McCarthy & Holthus 920 SW 3<sup>rd</sup> Av., Portland OR 97204  
16 e. Oregon Department of Revenue, 955 Center St., Salem OR 97301  
17 f. Chapter 7 Trustee, Stephen P Arnot, PO Box 1963, Lake Oswego OR 97035  
18 g. Susan Szanto - 11 Shore Pine, Newport Beach CA 92657  
19 h. Office of the US Trustee, 620 SW Main Street, Suite 213, Portland, OR 97205  
20 by mailing copies to the above parties *via* 1<sup>st</sup> class mail, postage prepaid, or by  
21 e-mail.  
22

23 I declare under penalty of perjury under the laws of the United States  
24 that the foregoing is true and correct. Signed at Irvine CA.  
25

26 Dated 3/11/ 2019 /s/ signed electronically M. Reynolds  
27  
28